

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. MUMBOWER and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 96-662; Submitted on the Record;
Issued January 28, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained greater than a 10 percent permanent impairment of the right leg for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 10 percent permanent impairment of the right leg.

On June 26, 1979 appellant, then a 34-year-old high voltage electrician, sustained a back injury in the performance of duty, for which he later underwent an authorized laminectomy on July 31, 1979. On March 4, 1980 appellant was injured in a nonwork-related automobile accident for which he underwent a second lumbar laminectomy with spine fusion on April 7, 1980.

On August 24, 1994 appellant requested a schedule award and by decision dated November 13, 1995, the Office of Workers' Compensation Programs granted appellant a schedule award for a 10 percent permanent impairment of the right leg for the period May 4 to November 21, 1995, a total of 28.80 weeks of compensation.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

*Impairment*³ (hereinafter A.M.A., *Guides*) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴ While a schedule award is not payable under the Act for an impairment of the back, a schedule award is payable for a permanent impairment of the legs that is due to an employment-related back condition.⁵

The medical evidence of record pertinent to appellant's schedule award claim includes reports from his treating physician Dr. Frederick George, a Board-certified orthopedic surgeon, who initially treated appellant conservatively after his June 26, 1979 work-related incident and, on July 21, 1979, diagnosed acute lumbosacral strain with probable herniated nucleus pulposus, L4-5. On July 25, 1979 Dr. George performed an amipaque lumbar myelogram and, on July 31, 1979, performed a lumbar laminectomy with excision of an extruded disc at the L4-5 area on the right side. Appellant claimed a schedule award. The Office requested that Dr. George evaluate appellant's permanent impairment pursuant to the fourth edition of the A.M.A., *Guides*. By report dated December 2, 1994, Dr. George indicated that appellant had reached maximum medical improvement and advised that appellant had a 20 percent permanent disability of the entire individual. Dr. George additionally noted that appellant appeared to have residuals of a herniated nucleus pulposus of his lumbar spine associated with mild spinal stenosis, degenerative disc disease and mild arachnoiditis. Dr. George did not make reference to the A.M.A., *Guides*.

In an January 23, 1994 report, an Office medical adviser opined that Dr. George's opinion did not comport with the A.M.A., *Guides*. In a May 4, 1995 report, Dr. Stephen M. Horowitz, a Board-certified orthopedic surgeon and an Office referral physician, indicated that he reviewed Dr. George's progress notes and medical reports. Dr. Horowitz noted that appellant's chief complaint was that of leg pain, primarily in the right leg, secondary to his complaint of back pain. Dr. Horowitz diagnosed a mild radiculopathy as a result of adjacent herniated disc and degenerative disease adjacent to his fusion area. He additionally felt that appellant had evidence of arthritis in the lumbar spine. Dr. Horowitz indicated that appellant's chief complaint of leg pain was secondary to nerve root compression. Dr. Horowitz concurred with Dr. George's opinion on impairment but did not refer to the A.M.A., *Guides*.

In an August 1, 1995 report, an Office medical adviser indicated that he reviewed the reports of Drs. George and Horowitz and noted that both specialists concurred in their opinions that impairment and complaints of the appellant are linked to his lumbosacral problems post laminectomy but that they did not refer to specific problems of the lower extremities. Thereafter, the Office sought a supplemental report from Dr. Horowitz.

In a supplemental report dated August 14, 1995, Dr. Horowitz stated that he felt that appellant had some evidence of nerve root compression in his lumbar spine which was causing his leg pain as those complaints were consistent with the magnetic resonance imaging (MRI) and

³ A.M.A., *Guides* (4th ed. 1993).

⁴ See James J. Hjort, 45 ECAB 595 (1994); Leisa D. Vassar, 40 ECAB 1287 (1989); Francis John Kilcoyne, 38 ECAB 168 (1986).

⁵ See Gordon G. McNeil, 42 ECAB 140 (1990).

electromyogram (EMG) findings. He further indicated that there was no one specific nerve root involved; rather, appellant had multiple irritability of several nerve roots, which included nerve roots from L3 to S1. Dr. Horowitz additionally opined that appellant's symptoms were secondary to the nerve root irritation and secondary to his arthritic condition.

In a September 8, 1995 report, an Office medical adviser, indicated that he reviewed Dr. Horowitz's supplemental report and based on Dr. Horowitz's original report of May 4, 1995 and the supplemental report, found a 10 percent permanent impairment of appellant's right lower extremity. The adviser stated that, utilizing Table 68 of the A.M.A., *Guides*, 5 percent of appellant's impairment was from sensory impairment of the common peroneal nerve and, utilizing Table 62 of the A.M.A., *Guides*, another 5 percent of appellant's impairment was from traumatic arthritis.

The Board finds that the Office medical adviser properly used the fourth edition of the A.M.A., *Guides* to rate appellant's permanent impairment. While Dr. George advised that appellant's impairment rating was 20 percent of the whole body, his opinion is of diminished probative value as he did not explain the basis of his rating and did not utilize the A.M.A., *Guides*. Likewise, Dr. Horowitz's opinion, in which he concurred with Dr. George that appellant had a 20 percent whole body impairment, is insufficient as Dr. Horowitz did not make specific reference to the A.M.A., *Guides*. Additionally, the schedule award provisions of the Act do not provide for a schedule award for whole body impairments.⁶ The Office medical adviser explained his conclusion that appellant sustained a 10 percent permanent impairment of the right lower extremity pursuant to the A.M.A., *Guides*.⁷ There is no evidence which establishes that, pursuant to the A.M.A., *Guides*, appellant is entitled to a higher degree of impairment than calculated by the Office medical adviser. The Office medical adviser reviewed the medical record, referred to specific provisions in the A.M.A., *Guides*, and found that appellant had no more than a 10 percent right leg impairment after combining the 5 percent impairment for sensory impairment and the 5 percent impairment for arthritis. Furthermore, contrary to appellant's contention, compensation is only appropriate for the right lower extremity as the Office medical adviser relied upon Dr. Horowitz's reports and, in the physical examination portion of the report dated May 4, 1995, Dr. Horowitz indicates that appellant's pain is predominantly in his right leg.⁸ As the medical adviser indicated how he calculated impairment pursuant to the A.M.A., *Guides*, the Board finds that the Office properly followed the advice of

⁶ See 5 U.S.C. § 8107. Office regulations pertaining to schedule awards also do not provide for a schedule award for whole body impairment; see 20 C.F.R. § 10.304; *Rozella L. Skinner*, 37 ECAB 398, 402 (1986).

⁷ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (where an attending physician gives an estimate of impairment but doesn't indicate that the estimate is based on the A.M.A., *Guides*, the Office may follow the advice of its medical adviser).

⁸ In his report of May 4, 1995, Dr. Horowitz indicated that appellant complained of burning pain in both knees when sitting; however, when placed supine, appellant complained of burning sensation in the right lower extremity whether or not his leg was held straight or his knee was flexed. This does not preclude appellant from claiming a schedule award for the left leg should such claim be supported by appropriate medical documentation.

its medical adviser in granting appellant a schedule award for a 10 percent permanent impairment of the right leg.⁹

The decision of the Office of Workers' Compensation Programs dated November 13, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 28, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁹ See *Luis Chapa, Jr.*, 41 ECAB 159 (1989).